

REMARKS

Claims 1-30 are pending in the present application.

The Examiner has required election in the present application between:

Group I, claims 1-12, drawn to a method for screening genomic DNA fragments capable of providing plants with an agriculturally advantageous phenotypic variation;

Group II, claims 13-15, drawn to a method for producing a genomic DNA fragment by culturing E. coli cells containing a closing vector carrying said genomic DNA fragment;

Group III, claim 16, drawn to a genomic DNA fragment;

Group IV, claims 17-21, drawn to a method for producing a plant having agriculturally advantageous phenotypic variation by introducing a genomic DNA fragment into said plant;

Group V, claim 22, drawn to a plant transformed with a genomic DNA fragment;

Group VI, claims 23-26, drawn to a method for analyzing a genomic DNA fragment by reading the nucleotide sequence of the fragment;

Group VII, claims 27-30, drawn to a method of using a genomic DNA fragment as a marker to be used in the improvement of a plant variety.

For the purpose of examination of the present application, Applicants elect, with traverse, Group I, Claims 1-12.

The traverse is on the grounds that:

According to the MPEP 803, in order for a Restriction Requirement to be proper, two criteria must be met:

- (1) the inventions must be independent or distinct as claimed, and

(2) there must be a serious burden on the Examiner if the restriction is not required.

Claims 1-30 are all closely related as the nucleic acid compositions and methods of their use. Thus, claims 1-30 would not pose a serious burden to the Examiner to search and examine together.

If any independent claim(s) are allowed, we request the removal of the Restriction Requirement for any claims that are dependent as originally filed from the allowed independent claims in this application.

The Examiner is reminded that when there are closely related embodiments, a search and examination of the entire embodiments can be made without serious burden, the Examiner MUST examine all the members of the group on the merits, even though they may be directed to distinct inventions (MPEP 803.02). In such a case, the Examiner would not follow the Restriction Procedures as described in the communication of October 9, 2008. There is no serious burden, because they are closely related, they would be classified in the same Class and Sub-Class, having related structures and function. The same patentable issues would be raised in the search and examination of claims 1-30.

The Examiner is respectfully reminded that if the Examiner (1) determines that the claims are Restrictable, and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable, the nonelected invention(s) should be considered for rejoinder. Any nonelected process claim that requires all the limitations of an allowable composition claim, should be rejoined. (See, MPEP § 821.04 and § 821.04(a)).

If this restriction requirement is made FINAL, Applicants reserve the right of petition from this Requirement for Restriction under 37 C.F.R. § 1.144 and Applicants reserve the right to file one or more continuing applications on the withdrawn claims.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Eggerton A. Campbell, Registration No 51,307 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- ☐ Attached is a Petition for Extension of Time.
- ☐ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated:

NOV 10 2008

Respectfully submitted,

By 

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